

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:21-CV-01585-S

**IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtors.**

**THE CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD.,
Appellants,**

v.

**HIGHLAND CAPITAL MANAGEMENT, L.P.,
Appellee.**

**PARTIALLY OPPOSED MOTION FOR EXTENSION OF TIME
TO FILE APPELLANTS' OPENING BRIEF**

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS, CASE NO. 19-34054-sgj11

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Counsel for Appellants The Charitable DAF Fund, L.P. and CLO Holdco, Ltd.

CLO Holdco, Ltd. and The Charitable DAF Fund, L.P. (collectively, “Appellants”) move this Court for an extension of time in which to file their Appellants’ Opening Brief on the Merits in this appeal of the bankruptcy court’s refusal to modify an order approving Appellee/Debtor Highland Capital Management, L.P.’s (“Appellee”) retention of its Chief Restructuring Officer and Chief Executive Officer James P. Seery, Jr. Appellants request thirty (30) days, until and including November 8, 2021, in which to file their opening brief in this appeal.

BACKGROUND

This appeal arises out of a long and complicated Chapter 11 bankruptcy involving Appellee, a global investment adviser registered with the SEC pursuant to the Investment Advisers Act of 1940 and which managed billions of dollars of third-party assets. *See generally* ROA.672, 831. Charitable DAF Fund, L.P. (“DAF”) and CLO Holdco, Ltd. (“CLO Holdco”) are two investors for whom Appellee performed services. *Id.*

In January 2020, as part of the ongoing Chapter 11 proceedings, the bankruptcy court entered an order that approved the appointment of three new independent directors to govern Highland Capital’s general partner, Strand Advisors, Inc. ROA.505-10. One of those new independent board members was Mr. James Seery. *Id.* Key to this appeal, in July 2020, the bankruptcy court approved Highland Capital’s request to appoint Mr. Seery as its new Chief Executive Officer

and Chief Restructuring Officer (the “Approval Order”). ROA.510-42; ROA.543-54. The Approval Order, like the January predecessor, contained gate-keeper and injunctive provisions that required parties seeking to sue Mr. Seery to first seek the bankruptcy court’s determination that the suing party had a viable claim for willful misconduct or gross negligence only. ROA.544-45. And if such a viable claim were determined to exist, the bankruptcy court would have “sole jurisdiction to adjudicate any such claim[.]” *See id.*

This appeal involves a challenge to the bankruptcy court’s refusal to modify its Approval Order and more specifically, the gate-keeping, exculpatory, and sole jurisdiction clauses in that order. Appellants timely filed this appeal and the record was filed (albeit with some deficiencies related to Appellee’s designations) on September 8, 2021. Appellants’ opening brief is currently due on October 8, 2021.

REASONS FOR EXTENSION

Appellants respectfully request a 60-day extension, up to and including December 7, 2021, by which to file their merits brief in this appeal, for the following reasons:

First, Appellants have filed a motion to stay or abate this appeal pending the resolution of a direct appeal to the Fifth Circuit arising out of the same bankruptcy proceeding. *See NexPoint Advisors, L.P. et al. v. Highland Capital Management, L.P.*, No. 21-10449 (5th Cir. 2021) [hereafter “*NexPoint Advisors* appeal”]. In that

appeal, several parties have challenged the Plan Confirmation Order, which also contains exculpatory and injunctive provisions similar to those contained in the Approval Order at issue in this appeal. The Fifth Circuit's resolution of that direct appeal may therefore narrow or even eliminate certain issues that would otherwise be raised here. This Court has issued a briefing schedule. Thus, Appellants request an extension of time given the pending motion for stay before this Court to avoid unnecessary briefing.

Second, there are very complex issues implicating application of 100-year-old doctrines with bankruptcy jurisdiction and federal securities law.

Third, Appellants' counsel are engaged in other matters with pressing deadlines, commitments, and ongoing work, including the following:

1. Trial in *JRJR, Inc. and Agel Enterprises, Inc. v. Michael A. Bishop, et al*, Cause No. DC-17-15206, 116th Judicial District Court, Dallas, County, Texas, on October 11-15, 2021;
2. Appellants' opening brief deadline in *The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, and Jonathan Bridges v. Highland Capital Management, L.P.*, Case No. 3:22-cv-01974-X, United States District Court, Northern District of Texas, on October 27, 2021;

3. Trial/arbitration in *In the Matter of the Arbitration Between: SBV-Atlanta-Concord Chase, LLC, et al and FPA Multifamily, LLC, et al*, JAMS Reference No. 1410008753, in Atlanta, Georgia, on November 30 – December 3, 2021.

Finally, counsel for Appellee has stated that Appellee is only agreeable to a ten-day extension of Appellants' brief deadline to October 18.

CONCLUSION AND REQUEST FOR RELIEF

For the above reasons, Appellants respectfully request that this motion for extension of time be granted and that the time for filing their opening merits brief in this appeal be extended by 30 days until and including November 8, 2021. Appellants request any and all further relief to which they may be entitled.

Dated: September 29, 2021

Respectfully submitted,

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*Counsel for Appellants The Charitable
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CERTIFICATE OF CONFERENCE

I hereby certify that on September 28 and 29, 2021, counsel for Appellants conferred with counsel for Appellee, who stated that Appellee is agreeable to only a ten-day extension of Appellants' brief deadline to October 18, 2021.

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti

CERTIFICATE OF SERVICE

I certify that on September 29, 2021, I caused a copy of the foregoing document to be served by Electronic Case Filing System for the United States District Court for the Northern District of Texas.

/s/ Mazin A. Sbaiti
Mazin A. Sbaiti